

conclude that these changes will rebalance the interests of new and established RespOrgs, but will not change the impact on the pool of spare toll free numbers.

79. We agree with NYNEX that a cap based on a percentage of working numbers does not necessarily constrain a RespOrg's ability to reserve numbers. However, we do not intend to impose a cap that restricts a RespOrg's ability to reserve numbers to meet its subscribers' needs. We conclude that the new cap should prevent RespOrgs from reserving an unreasonably high quantity of numbers, and will therefore curtail warehousing and prevent premature depletion of numbers, but is flexible enough to allow all RespOrgs to provide service to their subscribers. For these reasons, we reject a cap expressed solely as a number.

80. We also agree with NYNEX that a percentage-based cap alone is troublesome because the cap rises as the quantity of numbers available for reservation falls. In response to NYNEX's observation, we limit the total number of numbers that a RespOrg may have in reserved status at any one time. We conclude that no RespOrg may increase the quantity of numbers it holds in reserved status if that quantity is greater than three percent of the numbers available in the spare pool as of the preceding Sunday at 12:01 a.m. ET. Thus, RespOrgs may reserve either 2000 numbers or 7.5 percent of a RespOrg's working numbers, whichever is greater. In no event, however, may a RespOrg reserve more than three percent of the number of numbers available in the spare pool as of the previous Sunday at 12:01 a.m. ET. This measure will balance the draw among all RespOrgs when the pool is low, and will conserve numbers while reducing the likelihood of the necessity for "emergency" action by the Common Carrier Bureau.

E. DATA LINK PERFORMANCE

1. Background

81. The Commission understands that there is a limit to the number of transactions that the data links between the SMS database and the SCP can accommodate in any fixed period.²⁸⁷ We also recognize that the number of data messages these links are expected to

RespOrg is allowed to have in reserved status from 2000 to 1000 and, therefore, results in a more binding constraint on this RespOrg. An increase to 2000 as the minimum number of numbers that a RespOrg can have in reserved status eases this constraint.

²⁸⁷ A data message containing routing information is sent from the SMS database to each SCP when a toll free number is changed from assigned to working status. Once all SCPs have the proper routing information, the toll free number subscriber can receive calls. Similar data messages are sent from the SMS database to the SCPs over these same data links when there is a change in toll free number information, such as when a subscriber disconnects the number or changes its toll free service provider.

carry after the introduction of a new code may exceed the data links' maximum capacity. We remain concerned that these factors might affect the performance of the SMS database system, particularly its ability to send error-free data messages with accurate routing information to the SCPs. Without this accuracy, the quality of all toll free service could be affected. We sought comment on whether we should require the SCP owners to increase the data links' capacity to accommodate the increased volume of traffic anticipated when the 888 code was first opened for reservations, or whether the expected increase in volume would be only temporary (*i.e.*, triggered by unmet demand for toll free dialing numbers and the introduction of the new code).

82. We also asked commenters to identify actions the Commission might take to ensure no degradation in the performance of the SMS database when there is a high volume of activity. Specifically, we proposed allowing number reservation 45 days before network activation of the next toll free code. The reserved numbers could not be changed to working status, however, before the activation date. Finally, we sought comment on the proposal to limit the quantity of numbers that can change from reserved to assigned to working status in one day.²⁸⁸

2. Comments

83. Many SCP owners oppose requiring expansion of the data links between the SMS database and the SCPs.²⁸⁹ Unitel asserts that the issue of data links is being addressed in the SNAC forum and should be resolved by consensus among the interested parties.²⁹⁰ Avis supports the Commission's effort to ensure that there is no degradation in the performance of the SMS database during times of high activity.²⁹¹ MCI asserts that if the Commission is concerned that the volume may exceed the "technological capabilities of Bellcore and some of the LECs, "the Commission should direct SCP owners to upgrade their data links."²⁹²

3. Discussion

²⁸⁸ NPRM at 13699.

²⁸⁹ See, e.g., GTE Comments at 7-8; NYNEX Comments at 4; SWBT Comments at 11-12; BellSouth Comments at 8-9; U S West Comments at 13-15.

²⁹⁰ Unitel Comments at 20.

²⁹¹ Avis Comments at 8; see also Sprint Comments at 12-13.

²⁹² MCI Comments at 12-13.

84. We remain concerned about potential degradation in SMS database performance when there is a high volume of activity on the data links. We do not, however, require carriers to increase the capacity of the data links to handle more data messages. We agree that the pace of network enhancements should be driven by actual industry needs, and are confident that the SCP owners will increase the capacity of their data links if expansion is warranted. Further, we recognize, as Unitel has suggested, that the SNAC is addressing the "issue of data links," and we anticipate that SNAC will notify the Commission if it determines that there may be degradation in the performance of the SMS database because of the increase in toll free traffic. We also decline to limit the quantity of numbers that can change from reserved to assigned to working status in any one day. The record did not support this proposal, and we rely on the statements of several commenters who asserted that the existing capacity of the system can handle the normal daily operations of the SMS database.²⁹³ Further, the Bureau has already determined that early reservation should be permitted and that early reservation will reduce the burden imposed on the SMS database.²⁹⁴ We also note that, since deployment of the 888 SAC, we have received no reports of problems in downloading information from the SMS to the SCP.

F. PUBLIC AWARENESS AND INDUSTRY PARTICIPATION

1. Background

85. In the NPRM, we sought comment on whether, in addition to the educational efforts already underway, there should be efforts to heighten public awareness of the introduction of new toll free codes.²⁹⁵ Both the Commission and the telecommunications industry have sponsored education initiatives to inform the public of the new toll free 888 numbers. For example, between June 1995 and April 1996, the Bureau had public bi-weekly meetings with the industry to discuss preparation of the network to support the 888 toll free code. In the first meeting, the industry reported its plans to launch independent public relations campaigns, including hiring public relations firms to conduct multimedia campaigns, training sales staff, conducting press interviews and issuing press releases about the new toll free 888 SAC. The NPRM sought comment on who should conduct and pay for further

²⁹³ U S West at 13-15; BellSouth at 8-9.

²⁹⁴ Bureau Order at 2504.

²⁹⁵ NPRM at 13705.

public awareness efforts, and what other forms future educational efforts should take.²⁹⁶

2. Comments

86. Several commenters suggest that the Commission should require all carriers to have an educational plan for the 888 SAC and future toll free codes.²⁹⁷ Specifically, the 800 Users Coalition, supported by NYCHA, urges the Commission to require all carriers to: (1) share in the costs of educating the public; (2) collectively conduct a multimedia campaign that covers more than the top 35 geographic markets; and (3) invest, at minimum, the same resources in terms of media, scale, scope and effort that local exchange companies historically use to introduce new area codes or other changes in local numbering plans.²⁹⁸ They claim that carriers are best positioned to educate the general public regarding changes in telecommunications services.²⁹⁹ Other commenters urge the Commission to issue consumer bulletins and advisories because the Commission's consumer advisories attract more attention than press releases from carriers.³⁰⁰ Some commenters support the Commission's establishing special educational efforts for 800 number subscribers to address concerns regarding vanity numbers.³⁰¹ Several commenters oppose the Commission's mandating educational efforts and anticipate that competition in the toll free market will compel such efforts.³⁰² Sprint argues that education campaigns are business decisions; individual toll free providers should determine their form and financing.³⁰³

²⁹⁶ Id.

²⁹⁷ See, e.g., 800 Coalition Comments at 25; ARINC Comments at 6; MCI Comments at 22 (MCI has planned its own education campaign but would not oppose a limited industry educational effort to share the costs; it proposes that all carriers contribute to funding educational activities).

²⁹⁸ 800 Coalition Comments at 25; NYCHA Reply Comments at 13.

²⁹⁹ ARINC Comments at 6.

³⁰⁰ See, e.g., NIMA Comments at 9; Bell Atlantic Comments at 11; Sprint Comments at 26; Ameritech Comments at 39.

³⁰¹ See Wise Comments at 9; DMA Comments at 17.

³⁰² See, e.g., Pacific Comments at 6; NIMA Comments at 9; SNET Comments at 15; Sprint Comments at 26; Ameritech Comments at 39.

³⁰³ Sprint Comments at 26.

3. Discussion

87. We agree with those commenters asserting that competition in the toll free market will precipitate public education. AT&T began its educational efforts in September 1995.³⁰⁴ MCI has also developed a public awareness program. We would expect these educational efforts to cause other toll free service providers to adopt educational programs. Subscribers may seek out those carriers they associate with 888 (and future toll free codes) whether through multimedia campaigns, print advertisements or billing inserts. The low quantity of 800 numbers in the SMS database may also propel carriers to educate the public on 888 numbers because 888 numbers will be the only toll free numbers carriers will be able to offer their subscribers. We decline to require all carriers jointly to fund educational efforts; we agree with Sprint that such efforts are business decisions properly left to the discretion of the carrier. While we would fully support the joint effort MCI suggests, we find that it would be inappropriate for the Commission to mandate such efforts. In response to commenters asking the Commission to issue additional educational information regarding 888, we plan to continue our efforts to educate the public on numbering plan changes as a general matter³⁰⁵ through press releases, consumer alerts, and consumer fact sheets. Such information is also available on our World Wide Web site.³⁰⁶ We encourage others to make information on toll free numbers available on their home pages as well.

G. CIRCUIT BREAKER MODELS

1. Background

88. The stock and future exchanges use circuit breakers to restrict program trading in volatile markets by limiting access to computerized trading systems, thus halting trading over short periods of time. The Securities Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") adopted the circuit breaker rules in 1988

³⁰⁴ See AT&T Launched National Education Program to Introduce New 888 Toll-Free Prefix, August 16, 1995, AT&T News Release.

³⁰⁵ In the fall of 1995, the Bureau began working with an Industry Outreach Committee to address issues posed by the introduction of interchangeable area codes, of which 888 is one. This group consisted of Bureau staff, carriers, switch manufacturers, private branch exchange ("PBX") manufacturers, state public utility commissions and the North American Numbering Plan Administrator ("NANPA"). The purpose of this group was to develop educational material on new area codes specially targeted for PBX owners, carriers and international countries.

³⁰⁶ Our home page address is: <http://www.fcc.gov>. A page dedicated to toll free service is accessible through the Common Carrier Bureau's home page.

to allow volatile markets to cool off.³⁰⁷ In the NPRM, the Commission sought comment on the adoption of a similar circuit breaker model as a means of promoting the effective use of toll free numbers.³⁰⁸ While we understood that we could not apply the exact algorithm used in the stock market to the administration of toll free numbers, we tentatively concluded that a circuit breaker rule for toll free numbers would serve the public interest.³⁰⁹ We noted that circuit breaker rules would anticipate the problems posed by a rapid depletion of toll free numbers. We sought comment on whether other conservation proposals presented in the NPRM,³¹⁰ if adopted, would make circuit breaker rules unnecessary. Finally, we sought comment on certain implementation issues, such as whether RespOrgs would comply with circuit breaker rules, what costs RespOrgs or DSMI would incur in developing any circuit breaker model adopted, and whether the SMS database administrator could enforce a circuit breaker model.³¹¹

89. The NPRM presented two circuit breaker models for comment.³¹² In the first model, a circuit breaker would be "triggered" after the percentage of toll free numbers in the spare pool declined to a specific level. Once the circuit breaker was in effect, the industry might be required to begin planning the implementation of the next toll free code and the Commission would evaluate whether it should limit the amount of toll free numbers each RespOrg could reserve over a set period.³¹³ The second model, in contrast, would apply circuit breaker rules to the day-to-day operation of the SMS database. RespOrgs would be

³⁰⁷ See Securities Exchange Act Release Nos. 26386 (December 1988), 53 FR 52904; and 26198 (October 19, 1988), 53 FR 41637. See also SEC. CFTC Approve Coordinated Trading Halts in Volatile Markets, 20 Sec. Reg. & L. Rep. (BNA) No. 41, at 1580 (Oct. 21, 1988).

³⁰⁸ NPRM at n.95.

³⁰⁹ Id. at 13705.

³¹⁰ See, e.g., the Commission's proposal to reduce the amount of time a number can remain in any status but working. NPRM at 13697-98.

³¹¹ Id. at 13705-06.

³¹² Id.

³¹³ Id. See also id. at 13699-700 ("we propose that the Commission identify a trigger that would alert the industry that the current toll free code is sufficiently near completion to require that the next toll free code be prepared for deployment.")

limited in the amount of numbers they could reserve from the spare pool in one day.³¹⁴ If a RespOrg exceeded that cap, this would trip the circuit breaker and the RespOrg's daily allocation would be set by a prescribed formula. This type of circuit breaker would prevent a large amount of toll free numbers from being removed from the database over a short time regardless of how many numbers remained in the database.

2. Comments

90. Several commenters questioned the need for a circuit breaker model in general.³¹⁵ NYNEX states that the proposed models are cumbersome to administer and expensive to implement.³¹⁶ Other RBOCs contend that a circuit breaker model is not necessary if other measures proposed in the NPRM are adopted.³¹⁷ PageNet opposes adoption of a circuit breaker model because it would create an "artificial restriction."³¹⁸ Instead, it urges the Commission to concentrate on assuring that the industry implements the system upgrades required to make numbers available on a timely basis.³¹⁹ CompTel admits that, in the future, some rationing of toll free numbers may continue to be necessary to prevent depletion before a new code can be opened. Therefore, it does not oppose a "reasonable" circuit breaker rule applied during the implementation period before the introduction of a new toll free code.³²⁰ NEXTLINK claims that recent experience with the sudden acceleration of 800 number consumption demonstrated that an "equitable and predictable" mechanism is necessary to prevent abusive reservation practices and premature

³¹⁴ Id. at 13705-06.

³¹⁵ See, e.g., PCIA Comments at note 12; BellSouth Comments at 19; PageNet Comments at 15.

³¹⁶ NYNEX Comments at 10. See also Pacific Comments at 17 (it is difficult to prescribe remedies until the Commission has reached a conclusion based on its SMS database audit); SWBT Comments at 20 (the circuit breaker model would reward RespOrgs that grab numbers for customers who will not use them and is "bad public policy").

³¹⁷ See, e.g., Bell Atlantic Comments at 11; BellSouth Comments at 19.

³¹⁸ PageNet Comments at 15.

³¹⁹ Id.

³²⁰ CompTel Comments at 18. See also CVS Comments at 5; NTC Comments at 1; NEXTLINK Comments at 7; MCI Comments at 17; Unitel Comments at 5.

depletion of numbers.³²¹ NEXTLINK also suggests that a numerical cap may be lowered once the first circuit breaker model's "trigger" for exhaust of the present code has been reached.³²²

91. Regarding the second, day-to-day, circuit breaker model proposed in the NPRM, NEXTLINK suggests that the Commission adopt an absolute numerical cap applicable to all RespOrgs, and not a cap based on a percentage of the RespOrg's working numbers, because percentage-based caps unfairly penalize small RespOrgs. NTS also supports the second circuit breaker model to prevent stockpiling of toll free numbers, asserting that, without a circuit breaker, one or two RespOrgs will reserve over 80% of the available toll free numbers.³²³ Scherers proposes to limit the amount of numbers any RespOrg can reserve during a fifteen minute period.³²⁴ Scherers argues that the allocation can be based upon current volume of numbers under any RespOrg's control. Scherers states that its proposal will not prevent any company from conducting business and will allow the smallest RespOrgs equal access to "attractive vanity numbers."³²⁵

92. CompTel, like MCI, opposes a circuit breaker addressing day-to-day operations because there is no evidence that the rate of consumption of numbers has caused problems before the depletion of 800 numbers.³²⁶ It also argues that the proposal would penalize carriers experiencing growth by freezing their consumption at a rate below their current needs.³²⁷ Finally, CompTel argues that, if the model is applied to day-to-day operations, RespOrgs that reserve numbers in bulk amounts can manipulate the model easily.³²⁸ CompTel suggests that we assign a "neutral administrator" to study the circuit breaker concept and to

³²¹ NEXTLINK Comments at 6-7.

³²² Id.

³²³ NTS Comments at 1. In December 1994, over 90% of the "800-555-XXXX" numbers were reserved in less than ten minutes by a RespOrg with an MGI interface.

³²⁴ Scherers Comments at 10.

³²⁵ Id.

³²⁶ CompTel Comments at 17.

³²⁷ Id.

³²⁸ Id. at 19.

report its findings to the Commission.³²⁹ CVS supports limiting the rate of number reservation per unit of time.³³⁰

3. Discussion

93. The Commission is committed to ensuring that toll free numbers are available and efficiently used. We decline, however, to adopt a day-to-day circuit breaker model.³³¹ The day-to-day model appears to be flawed, could only be implemented after further study, and appears unnecessary because of the other actions taken in this Second Report and Order and the Bureau Order to promote the efficient use of toll free numbers. This Second Report and Order shortens several of the lag time periods, imposes a certification requirement on RespOrgs, and revises the maximum amount of numbers that RespOrgs may reserve at one time. The Commission may revisit the issue of a day-to-day circuit breaker if these actions have little effect on promoting the orderly allocation of toll free numbers. Finally, by keeping "vanity numbers" in the unavailable status for the time being, we hope to avert certain RespOrgs from attempting to "stockpile" numbers.

H. Petitions to Modify 888 Number Allocation Plan

94. The Commission has received three petitions requesting modification of the 888 number allocation plan. The petitions were filed by LCI International, Inc. (LCI), Consolidated Communications Telecom Services, Inc. (CCTS) and UniDial, Inc. (UniDial) (collectively, Petitioners). Petitioners state that, because of the low supply of 800 numbers,³³² they are unable to obtain enough toll free numbers to meet their customers' needs. Because the rules we are promulgating in this Order are essentially conservation measures themselves, we have directed DSMT to end the 888 number conservation plan when the rules we promulgate today become effective.³³³ RespOrgs will not be restricted to their previous allocations of 888 numbers. Therefore, the petitions are dismissed as moot.

³²⁹ Id.

³³⁰ CVS Comments at 5.

³³¹ We will consider the first model, which would trigger an implementation plan for the next toll free code, in a later order when we address other implementation issues regarding the 877 SAC and beyond. We will incorporate the comments on the first model into that order.

³³² See n. 31 supra.

³³³ See para. 14, supra.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

1. Background

95. In the NPRM, we sought comment on the appropriate party to administer the toll free database. We noted that DSMI is currently the primary administrator of the toll free database,³³⁴ and stated that the RBOCs had announced plans to sell Bellcore, which is the parent company of DSMI.³³⁵ We sought comment on whether DSMI should continue to administer the toll free database or whether another neutral entity, such as the North American Numbering Plan Administrator, should be the administrator.³³⁶ We asked parties to comment on whether the administrative database functions currently performed by DSMI and Lockheed should be performed by independent third parties not affiliated with Bellcore, the RBOCs, or current owners of the regional databases.³³⁷

96. In the 800 Proceeding Order, the Commission stated that the SMS was administered by the NASC, which was administered by Bellcore. It noted, however, that the RBOCs and Bellcore had agreed to transfer responsibility for the day-to-day operations to a neutral third party.³³⁸ The Commission rejected parties' arguments that SMS access did not have to be treated as a common carrier service and tariffed under Title II because the transfer of the day-to-day operations of the SMS to a neutral third party would safeguard against discrimination by the SMS administrator. The Commission stated that it was not clear that transferring the operations to a neutral third party would reduce concerns about possible discrimination in the provision of the monopoly service of providing SMS access. According to the Commission, it reached its conclusions in light of the importance of ensuring that SMS access be provided at reasonable rates and on nondiscriminatory terms, and because of the "untried nature" of the proposed alternative mechanisms for achieving these goals (*i.e.* transferring SMS administration to a neutral third party). The Commission concluded that,

³³⁴ See NPRM at 13705. In response to industry concerns, Bellcore established DSMI for the purpose of administering the SMS/800, and subcontracted functions requiring access to proprietary customer information to a neutral third party, Lockheed IMS.

³³⁵ Id. See also para. 8, *supra*.

³³⁶ Id.

³³⁷ Id.

³³⁸ Order at 1425.

under the BOC plans for providing SMS access to RespOrgs, such SMS access is a Title II common carrier service and should be offered pursuant to tariff, which would ensure that SMS access would be provided on a nondiscriminatory basis and at reasonable rates.³³⁹

97. The Commission further concluded that, based on how SMS access would be provided, the BOCs should file the tariff. The Commission noted that the BOCs, through Bellcore, had developed the SMS and would provide the SMS software, software maintenance and enhancement services, and billing and collection services. Bellcore initially would administer the SMS on a day-to-day basis. The Commission noted that, when the BOCs subcontracted NASC responsibilities to an independent third party, that third party would receive a set fee for the administrative services it would perform, which would be largely ministerial in nature. The BOCs and Bellcore would retain general control over the operation.³⁴⁰ The Commission directed that, since there is only one SMS, there should be one tariff for SMS access; the BOCs should file a single joint tariff, or one BOC should file a tariff in which the others concurred.³⁴¹

98. Since the record in this docket closed, new legislation was enacted regarding, in particular, numbering administration. As noted, §251(e)(1) of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. Section 251(e)(1) also gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States, but states that the Commission is not precluded from delegating to State commissions or other entities all or any portion of the Commission's jurisdiction.³⁴²

99. In Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 96-333, CC Docket No. 96-98 (August 8, 1996) (Local Competition Second Report and Order), the Commission concluded that actions taken in Administration of the North American Numbering Plan, CC Docket No. 92-237, Report

³³⁹ Order at 1426-1427.

³⁴⁰ Order at 1427, citing letter from Anthony M. Alessi, Director -- Federal Regulatory, Ameritech, to Donna Searcy, Secretary, FCC, January 28, 1993; letter from Marie Breslin, Director, FCC Relations, Bell Atlantic, to Donna Searcy, Secretary, FCC, March 13, 1992, and 800 Data Base Access Service Implementation Plan, March 2, 1992, at 32-34.

³⁴¹ Id.

³⁴² 47 U.S.C. § 251(e)(1).

and Order, 11 FCC Rcd 2588 (1995) (NANP Order), satisfy the § 251(e)(1) requirement that the Commission create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.³⁴³ In the NANP Order, the Commission directed that functions associated with NANP administration be transferred to a new administrator of the NANP, unaligned with any particular segment of the telecommunications industry.³⁴⁴ The Commission also stated its intention to undertake the necessary procedural steps to create the North American Numbering Council (NANC).³⁴⁵ It directed the NANC to recommend a NANP administrator that is an independent, non-government entity not closely associated with any particular industry segment.³⁴⁶

100. Section 251(b) of the Communications Act of 1934, as amended, imposes an obligation on all local exchange carriers to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission. In Telephone Number Portability, FCC-286, CC Docket No. 95-116 (July 2, 1996) (Number Portability Order), the Commission promulgated rules and regulations implementing this directive. We concluded that a system of regional databases that are managed by one or more independent administrators would serve the public interest. We directed the North American Numbering Council (NANC) to provide initial oversight of this regional database system, to determine the number and location of the regional databases, and to select one or more administrators responsible for deploying the number portability database system.

2. Discussion

101. Although we will consider the comments we already have received on this issue, and will incorporate them with the comments we receive in response to this Further Notice, we find it necessary to seek further comment on the administration of the toll free database so that we can determine what entity should administer the toll free database, particularly in light of passage of the 1996 Act. In this Further Notice of Proposed Rulemaking, we seek comment on how the creation or designation of one or more impartial entities to administer telecommunications numbering and to make numbers available on an equitable basis affects the Commission's choice of an administrator for the toll free database.

³⁴³ Local Competition Second Report and Order at paras. 264-266.

³⁴⁴ NANP Order at 2613.

³⁴⁵ NANP Order at 2608.

³⁴⁶ Id. at 2609.

We seek comment on what entity would be an appropriate toll free database administrator, given that the Act opens all telecommunications markets to competition, and the current administrator is owned by Bellcore, which is presently owned by the RBOCs, a discrete industry segment. We tentatively conclude that, given DSMI's current ties to the RBOCs, DSMI's continuation as the toll free database administrator, at least until finalization of the sale of Bellcore, would violate § 251(e) of the Act. We seek comment on this tentative conclusion, and seek comment on how the agreement for the sale of Bellcore³⁴⁷ affects resolution of the question of who should administer the toll free database.

102. We conclude that § 251(e)(1) requires, at the very least, that all numbering administration functions be examined to determine if numbering administration is facilitating competition for telecommunications services. We disagree with assertions, made in comments received before passage of the 1996 Act, that there is no need to consider the issue of who should administer the toll free database because the issue was decided in the 800 Proceeding.³⁴⁸ Given the evolution of telecommunications markets and toll free service, as well as the mandates of § 251(e)(1), we conclude that the issue of who should administer the toll free database is an important and relevant one.

103. We seek comment on what further action the 1996 Act requires that the Commission take to ensure that there is an impartial number administrator for toll free administration.³⁴⁹ We seek comment on what role, if any, the NANC should have in determining what entity should assume the responsibility of toll free database administration. We seek comment on whether the toll free database administrator should be the same entity that ultimately is chosen as the NANP administrator or the number portability administrator,

³⁴⁷ See para. 8, supra.

³⁴⁸ NYNEX Comments at 10. See also SWBT Comments at 19-20; U S West Comments at 27-28; Ameritech Comments at 37-39, n. 28.

³⁴⁹ In the Local Competition Second Report and Order, the Commission responded to arguments that the NANP Order did not meet the requirements of § 251(e)(1) because it did not address toll free number administration. The Commission noted that the NANP Order directed the NANC to provide recommendations on the question of what number resources, beyond those currently administered by the NANP administrator, the NANP Administrator should administer. The Commission stated that its purpose in directing the NANC to address this question was to develop a record on the issue of whether the new administrator should assume additional responsibilities beyond those of the current NANP administrator to facilitate competition in telecommunications services. According to the Commission, by asking the question and seeking recommendations from the NANC, it set into motion a process designed to foster competition in all telecommunications services, including toll free service, through numbering administration. See Local Competition Second Report and Order at para. 266.

or whether another administrator should be chosen strictly for the toll free database.

104. We seek comment on what effect the selection of a new administrator for the toll free database would have on the Commission's 800 Proceeding Order in which the Commission concluded that, under the RBOC plans for providing SMS access, such SMS access is a Title II common carrier service and must be provided under tariff. Specifically, we seek comment on whether access to the database should still be provided pursuant to tariff if there is ultimately a new administrator of the database and if so, what party or entity should file the tariff.

105. We seek comment on how, if a new toll free number administrator is chosen, that administrator will obtain access to the information currently found in the toll free database and how that administrator will obtain access to the necessary software, equipment, and other items essential to administration of the toll free database. We seek comment on how the transition to a new administrator could be accomplished without disruption in toll free service. We seek comment on the Commission's authority to impose a requirement the RBOCs and Bellcore license to any third party administrator the software that is required to continue operation of the SMS and the NASC, and seek comment on how the Commission should use such authority.

106. We seek comment on several other issues. Specifically, we seek comment on whether, as proposed by ACTA: (1) DSMI, as the SMS administrator, should report to the Commission; (2) any services that DSMI subcontracts must be subcontracted to an entity neutral and apart from the industry; (3) the selection of an administrator should be by competitive bidding; (4) costs for toll free number administration should be reimbursed through fees to the industry; and (5) the new administrator should be responsible for network planning of future toll free codes.³⁵⁰ We seek comment on, if DSMI is to report to the Commission, what information it should include in reports. Regarding ACTA's proposal for cost recovery, we seek comment on what specific costs should be reimbursed through fees to "the industry," and what specific members of the industry should be required to bear the costs of toll free number administration. We seek comment on whether the Commission should direct DSMI to withhold access to, and treat as proprietary, competitively sensitive information, such as information on vanity numbers and RespOrg replication lists, as proposed by Sprint.³⁵¹

³⁵⁰ ACTA Comments at 20.

³⁵¹ Sprint Comments at 22-24.

VI. PROCEDURAL MATTERS**A. Ex Parte**

107. The Further Notice of Proposed Rulemaking is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§1.1202, 1.1203, and 1.1206(a).

B. FINAL REGULATORY FLEXIBILITY ANALYSIS, INITIAL REGULATORY FLEXIBILITY ANALYSIS, AND INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

108. The Final Regulatory Flexibility Analysis, the Initial Regulatory Flexibility Analysis for the Further Notice of Proposed Rulemaking, and the Initial Paperwork Reduction Act of 1995 Analysis for the Further Notice of Proposed Rulemaking are contained in Appendix A.

VIII. ORDERING CLAUSES

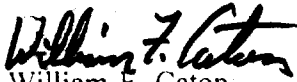
109. Accordingly, pursuant to §§ 1, 4(i), 201-205, 218, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218, and 251, IT IS ORDERED that the SECOND REPORT AND ORDER is hereby ADOPTED.

110. IT IS FURTHER ORDERED, pursuant to §§ 1, 4(i), 201-205, 218, and 251 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 218, and 251, that the FURTHER NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

111. IT IS FURTHER ORDERED that all policies, rules, and requirements set forth herein are effective 30 days after publication of this order in the Federal Register, except for collections of information subject to approval by the Office of Management and Budget ("OMB"), which are effective 70 days following publication in the Federal Register.

112. IT IS FURTHER ORDERED that the Common Carrier Bureau is delegated authority to establish, modify, and monitor conservation plans for toll free numbers if exigent circumstances make such action necessary.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Appendix A

113. As required by the Regulatory Flexibility Act (RFA),³⁵² an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Toll Free Service Access Codes, CC Docket No. 95-155, Notice of Proposed Rulemaking (NPRM) in this proceeding. The Commission sought written public comments on the proposals in the NPRM, including the IRFA.³⁵³ The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA, as amended.³⁵⁴

Need for and Objectives of the Proposed Rules:

114. The Commission, in compliance with Sections 1 and 251(e)(1), and Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, promulgates rules in this Second Report and Order to ensure the efficient, fair, and orderly allocation of toll free numbers. This Second Report and Order addresses comments filed in response to the NPRM concerning the allocation of toll free numbers. The rules promulgated in this order are in the public interest and are necessary to ensure the fair, equitable, and orderly allocation of the toll free number resource.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA:

115. In the NPRM, the Commission included an IRFA of the expected impact on small entities of the proposals suggested in the NPRM.³⁵⁵ The Commission noted that the proposals set forth in the NPRM may have a significant economic impact on a substantial number of small entities, because toll free numbers are essential to many businesses both in terms of marketing and advertising products. Further, the Commission noted that toll free numbers may also have an intrinsic value to many businesses. The Commission sought

³⁵² See 5 U.S.C. § 603.

³⁵³ NPRM at 13707.

³⁵⁴ See 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA).

³⁵⁵ NPRM, Appendix A.

written public comments on the IRFA.³⁵⁶ Although no comments were submitted in direct response to the IRFA, the Commission has addressed the issues raised in the general comments that pertain to small entities,³⁵⁷ and has considered the significant economic impact on a substantial number of small entities.

Description and Estimate of the Number of Small Entities to which the Rules Will Apply:

116. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.³⁵⁸ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).³⁵⁹ SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.³⁶⁰ We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

117. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any

³⁵⁶ NPRM at 13707.

³⁵⁷ See, e.g., MFS Comments at 4-5.

³⁵⁸ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

³⁵⁹ 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

³⁶⁰ 13 C.F.R. § 121.201.

incumbent LECs that arguably might be defined by SBA as "small business concerns."³⁶¹

1. Responsible Organizations

118. We adopt several rules today that apply to all Responsible Organizations (RespOrgs), which may be small business entities. Any entity that meets certain eligibility criteria may serve as a RespOrg. Neither the Commission nor the SBA has developed a definition of small entities that would apply specifically to RespOrgs. The most reliable source of information regarding the number of RespOrgs appears to be data collected by Database Service Management, Inc. ("DSMI"), the organization that administers the toll free allotment database. According to a May 8, 1996, report obtained from DSMI, 168 companies reported that they were RespOrgs.³⁶² Although it seems certain that some of these RespOrgs are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of RespOrgs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 168 small entity RespOrgs that may be affected by decisions in this order.

2. Toll Free Subscribers

119. We also adopt some rules that apply to all toll free subscribers, which also may be small business entities. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to toll free subscribers. The most reliable source of information regarding the number of 800 subscribers of which we are aware appears to be the data we collect on the 800 numbers in use.³⁶³ According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 subscribers appears to be the data we collect on the 888 numbers in use.³⁶⁴ According to our most recent data, at the end of August 1996, a total of 2,014,059 888 numbers were assigned. Although it seems certain that some of these subscribers either are not independently owned and operated businesses, or do not have more than 1,500 employees, we are unable at this time to estimate with greater precision

³⁶¹ See 13 C.F.R. § 121.210 (SIC 4813).

³⁶² DSMI, SMS/800 Overview, SMS/800 Statistics (May 8, 1996).

³⁶³ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbl. 20 (May 16, 1996).

³⁶⁴ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Long Distance Carrier Code Assignments, p. 80, Tbl. 10B (October 18, 1996).

the number of toll free subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 888 subscribers that may be affected by the decisions and rules adopted in this Second Report and Order.

3. Telephone Companies (SIC 4813)

120. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁶⁵ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."³⁶⁶ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Second Report and Order.

121. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁶⁷ According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.³⁶⁸ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs.

³⁶⁵ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

³⁶⁶ 15 U.S.C. § 632(a)(1).

³⁶⁷ 1992 Census, *supra*, at Firm Size 1-123.

³⁶⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Second Report and Order.

122. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.³⁶⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Second Report and Order.

123. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.³⁷⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this Second Report and Order.

³⁶⁹ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

³⁷⁰ Id.

124. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.³⁷¹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this Second Report and Order.

125. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.³⁷² Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this Second Report and Order.

126. Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone

³⁷¹ Id.

³⁷² Id.

services.³⁷³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this Second Report and Order.

127. Wireless (Radiotelephone) Carriers. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.³⁷⁴ According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.³⁷⁵ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Second Report and Order.

128. Cellular Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services.³⁷⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service

³⁷³ Id.

³⁷⁴ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

³⁷⁵ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

³⁷⁶ TRS Worksheet at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Second Report and Order.

129. Mobile Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services.³⁷⁷ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Second Report and Order.

130. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁷⁸ For Block F, an additional classification for "very small businesses" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³⁷⁹ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.³⁸⁰ However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small

³⁷⁷ Id.

³⁷⁸ See Amendment of Parts 20 and 24 of the Commission's rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57-60 (released June 24, 1996) 61 FR 33859 (July 1, 1996); see also 47 CFR § 24.720(b).

³⁷⁹ Id. at para. 60.

³⁸⁰ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997).

businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

131. SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.³⁸¹ The rules adopted in this Second Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Second Report and Order.

132. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Second Report and Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Second Report and Order.

³⁸¹ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).